

1 **PHILLIPS DAYES**

2 LAW FIRM

3 A Professional Corporation

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10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF ARIZONA**

13 Daniel Kesler;

14 Case No.: \_\_\_\_\_

15 Plaintiff,

16 **COMPLAINT**

17 vs.

18 Burger King Corporation, an Arizona  
19 corporation.

20 Plaintiff Daniel Kesler, for his Complaint against Defendant, alleges as follows:

21 **NATURE OF THE CASE**

22 1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3), it is  
23 unlawful to discharge or in any other manner discriminate against any employee because  
24 such employee has filed a complaint or instituted or caused to be instituted any  
25 proceedings under or related to this chapter, or has testified or is about to testify in any  
such proceedings, or has served or is about to serve on an industry committee..."

26 2. Such conduct not only includes formal complaints with a court or the  
27 Department of Labor, but also informal complaints to an employer. *See Williamson v.*  
28 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000).

3. Plaintiff brings this action against Defendant for retaliation in violation of the FLSA.

4. Plaintiff has suffered emotional distress, mental anguish, lost past and future wages as a result of Defendant's retaliatory conduct.

5. As a result of Defendant's retaliatory conduct, Plaintiff is entitled to compensatory damages, punitive damages, attorneys' fees and costs, and all other legal or equitable relief permitted under 29 U.S.C. § 216.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter and the parties hereto pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

7. Venue is proper under 28 U.S.C. § 1391(b) because all of the events or omissions giving rise to this matter occurred in this District.

8. The named Defendant, by virtue of their own acts and omissions or by virtue of the acts and omissions committed by one or more of their agents, employees or representatives, as described herein, have conducted business or caused events to occur within the District of Arizona and, more particularly, within Maricopa County, Arizona, as more particularly described herein so as to give rise to both subject matter and personal jurisdiction of this Court.

## PARTIES

9. At all times material hereto, Plaintiff was a resident of Maricopa County, Arizona.

10. At all times material hereto, Burger King Corporation was incorporated in

1 the State of Arizona with its principal place of business in Maricopa County, Arizona.

2 **FACTUAL BACKGROUND**

3 11. At all relevant times, Plaintiff was an “employee” of Defendant.

4 12. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendant.

5 13. At all relevant times, Defendant was and continues to be an “employer” as  
6 defined in 29 U.S.C. § 203(d).

7 14. Defendant should be deemed an “employer” for purposes of the FLSA  
8 including, without limitation, 29 U.S.C. § 216.

9 15. At all times material to this action, Defendant was and continues to be an  
10 “enterprise engaged in commerce or in the production of goods for commerce” as defined  
11 by 29 U.S.C. § 203(s)(1).

12 16. Plaintiff engaged in commerce or in the production of goods for commerce  
13 and was therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a),  
14 207(a)(1), 212(c).

15 17. On information and belief, at all relevant times, the annual gross revenue of  
16 Defendant exceeded, and continues to exceed, \$500,000.00.

17 18. Defendant is a fast-food restaurant.

18 19. Defendant hired Plaintiff as a Manager-in-Training.

20 20. On May 22, 2017, Plaintiff expressed his concerns with Defendant’s Human  
21 Resources that employees in his restaurant were working off-the-clock to keep labor  
22 hours low.

21. Plaintiff was fired shortly after expressing his concern about off-the-clock work.

22. Plaintiff has retained the law firm of Phillips Dayes Law Firm PC to prosecute his claims against Defendant on his behalf and has agreed to pay reasonable costs and attorney's fees in the prosecution of this matter.

**COUNT ONE**  
**RETALIATION IN VIOLATION OF THE FLSA**

23. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth herein.

24. As set forth above, Plaintiff was retaliated against for exercising his rights under the FLSA.

25. Pursuant to FLSA, 29 U.S.C. § 215(a)(3), it is unlawful to discharge or in any other manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceedings under or related to this chapter, or has testified or is about to testify in any such proceedings, or has served or is about to serve on an industry committee...”

26. Such conduct not only includes formal complaints with a court or the Department of Labor, but also informal complaints to an employer. *See Williamson v. Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000).

27. Plaintiff has suffered emotional distress, mental anguish, lost past and future wages as a result of Defendant's retaliatory conduct.

28. As a result of Defendant's retaliatory conduct, Plaintiff is entitled to compensatory damages, punitive damages, attorneys' fees and costs, and all other legal or equitable relief permitted under 29 U.S.C. § 216.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor, and against Defendant:

- a. Awarding Plaintiff compensation in the amount due for unpaid minimum wages in an amount to be proved at trial;
- b. Awarding Plaintiff an additional amount equal to twice the underpaid wages;
- c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of litigation pursuant to A.R.S. § 23-364(G);
- d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts awarded under subsections (A) and (B) above from the date of the payment due for that pay period until paid in full;
- e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards from the date of such award until paid in full; and
- f. For such other and further relief as the Court deems just and proper.

Sated: August 8, 2018

Respectfully submitted,

PHILLIPS DAYES LAW FIRM PC

By: /s/ Sean C. Davis

## Trey Dayes

Sean C. Davis

## Preston Flood

Attorneys for Plaintiff